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No. 89-364

In The

Supreme Court of the United States

October Term, 1989

PACIFIC POWER AND LIGHT COMPANY, et al.,

Petitioners,

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA, et al.,

Respondents.

APPENDIX TO THE BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The Montana Beneficial Use Tax Statute - Mont. Code Ann. § 15-24-1203 (1983).

> **15-24-1203. Privilege tax on gainful use of tax-exempt property – exceptions.** After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax.

Montana Ad Valorem Central Assessment Statute - Mont. Code Ann. § 15-23-101 (1983)

15-23-101. (Effective as provided in Compiler's Comment)

Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12. **(Subsection (6) applicable to taxable periods beginning after December 31, 1983.)**

Montana Statute for Effective Date of Legislation - Mont. Code Ann. § 1-2-201 (1983)

1-2-201. Statutes – effective date. (1) Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution.

Montana General Ad Valorem Real Property Tax Statute - Mont. Code Ann. § 15-6-134 (1983)

15-6-134. Class four property – description – taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple;

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(c) is taxed at 8.55 of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 – $1,000	$0 – $ 1,000	0%
1,001 – 2,000	1,001 – 2,000	10%
2,001 – 2,800	2,001 – 3,000	20%
2,801 – 3,600	3,001 – 4,000	30%
3,601 – 4,400	4,001 – 5,000	40%
4,401 – 5,200	5,001 – 6,000	50%
5,201 – 6,000	6,001 – 7,000	60%
6,001 – 6,800	7,001 – 8,000	70%
6,801 – 7,600	8,001 – 9,000	80%
7,601 – 8,000	9,001 – 10,000	90%

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage established in subsection (2)(a), or 4.275%.

Montana Burden of Proof Statute - Mont. Code Ann. § 26-1-401 (1983)

> **26-1-401. Who has the burden of producing evidence.** The initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against him in the absence of further evidence.

Montana Burden of Persuasion Statute - Mont. Code Ann. § 26-1-402 (1983)

> **26-1-402. Who has the burden of persuasion.** Except as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.

Congressional Definition of Cooperatives - 16 U.S.C. § 832b

> As employed in this Act, the term "public body", or "public bodies", means States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof. As employed in this Act, the term "cooperative", or "cooperatives", means any form of nonprofit-making organization or organizations of citizens supplying, or which may be created to supply, members with any kinds of goods, commodities, or services, as nearly as possible at cost.

Bonneville Power Act - Preference for Cooperative Customers - 16 U.S.C. § 832c

(a) **General provisions**. In order to insure that the facilities for the generation of electric energy at the Bonneville project shall be operated for the benefit of the general public, and particularly of domestic and rural consumers, the administrator shall at all times, in disposing of electric energy generated at said project, give preference and priority to public bodies and cooperatives.

(b) **Prior to January 1, 1942; subsequent thereto.** To preserve and protect the preferential rights and priorities of public bodies and cooperatives as provided in section (a) and to effectuate the intent and purpose of this Act that at all times up to January 1, 1942, there shall be available for sale to public bodies and cooperatives not less than 50 per centum of the electric energy produced at the Bonneville project, it shall be the duty of the administrator in making contracts for the sale of such energy to so arrange such contracts as to make such 50 per centum of such energy available to said public bodies and cooperatives until January 1, 1942: Provided, That the electric energy so reserved for but not actually purchased by and delivered to such public bodies and cooperatives prior to January 1, 1942, may be disposed of temporarily so long as such temporary disposition will not interfere with the purchase by and delivery to such public bodies and cooperatives at any time prior to January 1, 1942: Provided further, That nothing herein contained shall be construed to limit or impair the preferential and priority rights of such public bodies or cooperatives after January 1, 1942; and in the event that after such date there shall be conflicting or competing applications for an allocation of electric energy

between any public body or cooperative on the one hand and a private agency of any character on the other, the application of such public body or cooperative shall be granted.

Pacific Northwest Electric Power Planning and Conservation Act of 1980 - Priority for Preference Customers - 16 U.S.C. § 839c(a)

> **(a) Preferences and priorities.** All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

Pacific Northwest Electric Power Planning and Conservation Act of 1980 - Classification of Cooperative Customers - 16 U.S.C. § 839c(e)

> **(e) Contractual entitlements to firm power.** (1) The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 6 may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class;
>
> (A) public bodies and cooperatives;
>
> (B) Federal agencies;
>
> (C) direct service industrial; and
>
> (D) investor owned utilities.

Pacific Northwest Electric Power Planning and Conservation Act of 1980 - Continued Preference for Cooperative Customers - 16 U.S.C. 839g(c)

> **(c) Statutory preferences and priorities of public bodies and cooperatives in sale of federally generated power.** Nothing in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

Pacific Northwest Electric Power Planning and Conservation Act of 1980 - Congressional Declaration of Purpose - 16 U.S.C. § 839

The purposes of this Act, together with the provisions of other laws applicable to the Federal Columbia River Power System, are all intended to be construed in a consistent manner. Such purposes are also intended to be construed in a manner consistent with applicable environmental laws. Such purposes are:

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System –

(A) conservation and efficiency in the use of electric power, and

(B) the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in –

(A) the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources,

(B) facilitating the orderly planning of the region's power system, and

(C) providing environmental quality;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization on a current basis of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this Act –

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this Act; and

(6) to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially

obtainable from the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.

Atomic Energy Act of 1954 - Payments in Lieu of Taxes - 42 U.S.C. § 2208

> In order to render financial assistance to those States and localities in which the activities of the Commission are carried on, and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.